143-649

See Nos. 1049 & 1050 for briefs —

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1890.**

No. ~~1615.~~ 1052

MARSHALL FIELD & CO., APPELLANTS,

*vs.*

JOHN M. CLARK, COLLECTOR OF THE PORT OF CHICAGO.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

**FILED MARCH 2, 1891.**

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

NO. .....

In the Matter of the Appeal of MARSHALL FIELD & CO., from the Decision of the United States Circuit Court for the Northern Division of the Northern District of Illinois, in the matter of the Application of MARSHALL FIELD & CO. to that Court for a Review of a Decision of the Board of United States General Appraisers at New York.

Supreme Court of the United States. October term, 1890. No.....

In the matter of the appeal of Marshall Field & Co. from the decision of the United States Circuit Court for the Northern Division of the Northern District of Illinois, in the matter of the application of Marshall Field & Co., to that court for a review of a decision of the Board of United States General Appraisers at New York.

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Pleas in the Circuit Court of the United States of America, for the Northern Division, of the Northern District of Illinois, held at the United States Court rooms, in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, Judge of the District Court of the United States for the Northern District of Illinois, on Wednesday, the twenty-fifth day of February, 1891, in the December term of said court, in the year of our Lord, one thousand eight hundred and ninety, and of our Independence the one hundred and fifteenth year.

WM. H. BRADLEY, Clerk.

In the matter of the application of Marshall Field and Company for a review of the decision of the United States Board of General Appraisers, at New York, Protest 2051—B.

Be it remembered that on the 31st day of December, 1890, there was filed in the office of the Clerk of the United States Circuit Court, for the Northern Division of the Northern District of Illinois, an application by Marshall Field & Co., for a review of the decision of the Board of the United States General Appraisers at New York, Protest 2051—B, a copy of which was duly served on the Collector of the port of Chicago, the same, together with the indorsements thereon and acknowledgment of service, being in the words and figures following, to-wit:

UNITED STATES OF AMERICA, } ss.
Northern District of Illinois, }

In the United States Circuit Court, December term, A. D. 890.

In the matter of the appeal of Marshall Field & Co. from the decision of the Board of United States General Appraisers at New York. General No. 21,880. Term number 606.

Marshall Field, Joseph N. Field, Harlow N. Higinbotham, John G. McWilliams, Robert M. Fair, Thomas Templeton, Lafayette McWilliams and Harry G. Selfridge, allege, that they now are, and at the times hereinafter named, were co-partners doing business in the city of Chicago under the firm name of Marshall Field & Co. That on or about the dates hereinafter set forth, said firm owned, imported and

entered at the port of Chicago, certain merchandise, to wit certain wool dress goods weighing over four ounces to the square yard, certain silk embroideries and certain wool wearing apparel, which merchandise was imported into the port of New York in cases Nos. 11,172 and 11,173, October 6, 1890, transported to this port—Chicago—by American Express Company under immediate transportation entry No. 19,622, and entered for consumption under the following numbers, and duties were paid thereon on the following dates, viz.:

| Consumption Entry Number: | Vessel. | Date of Payment. |
|---|---|---|
| 8913. | "La Champagne." | October 10, 1890. |

That thereafter the Collector at said port of Chicago proceeded to ascertain, fix and liquidate the rate and the amount of the duties to be paid on said merchandise, as follows, to-wit—on certain wool dress goods at forty-four cents per pound and fifty per cent. (50 per cent.) *ad valorem;* on certain silk embroideries at 60 per cent. *ad valorem;* and on wool wearing apparel at 49½ cents per pound and 60 per cent. *ad valorem*.

Complainants further say that they were dissatisfied with said rate and amount and with said decision of said Collector, and within ten days after said determination of said collector (but not before said ascertainment and liquidation of duties) gave notice in writing to said collector, setting forth therein distinctly and specifically in respect to said entry and payment, the reasons for their objections thereto and paid the full amount of the duties and charges so decided to be due thereon.

That thereafter the collector transmitted the invoice and all the papers and exhibits to the Board of General Appraisers at New York, who, on the 14th day of December, A. D. 1890, returned that they had examined and decided as to said entry, and affirmed the said decision of said collector of the port of Chicago.

Complainants further say that they are dissatisfied with said decision of said Board of General Appraisers as to the construction of the law and the facts respecting the classification of said merchandise and the rate of duty imposed thereon, and that this application for a review of the questions of law and fact involved in such decision is filed within thirty days next after such decision. The said decision of said Board of General Appraisers contains a sufficient

statement of the case, and complainants further say that the following is a concise statement of the errors of law and of fact complained of.

ERRORS OF FACT.

1st. The board erred in holding that the alleged act of Congress entitled, "An act to reduce the revenue and equalize duties on imports and for other purposes," purporting to have been approved October 1st, 1890, ever passed the House of Representatives and Senate in manner and form, as it now appears of record in the department of State.

2d. The board erred in holding that the bill entitled as above, which passed the House of Representatives and Senate, was ever presented to the president or signed or approved by him as required by the Constitution.

ERRORS OF LAW.

1st. The board erred in affirming the decision of the collector of the port of Chicago, assessing certain rates of duty on said imported merchandise according to an alleged "Act to reduce the revenue and equalize duties on imports and for other purposes," and purporting to have been approved October 1st, 1890, instead of under the provisions of the acts of March 3d, 1883, and June 10th, 1890.

2d. The board erred in overruling the protest of complainants against said decision of said collector.

3d. The board erred in holding that where a bill, which passed both the House of Representatives and the Senate, containing a clause which the Senate opposed and receded from their opposition only after conference ordered, and which was engrossed and presented to and signed by the president, omitting the clause upon which the controversy between the two houses took place, it renders invalid the omitted section only, and does not render void the entire act.

4th. The board erred in holding that said act was passed by the Senate and House of Representatives and was presented to and signed by the president in accordance with the Constitution, and became a law.

5th. The board erred in holding in effect that the case at bar is parallel with one where a bill has become a law, by going through all the forms made necessary by the Constitution, and afterwards some portion is pronounced unconstitutional, which portion is wholly independent of the remainder of the act.

6th. The board erred in holding in effect that in a revenue law, such as the McKinley Bill, so called, all the parts are not "so mutually connected with and dependent on each other as conditions, considerations or compensations for each other, as to warrant a belief that the Legislature intended them as a whole."

7th. The board erred in holding in effect the former tariff acts, in force prior to October 6th, 1890, to have been repealed.

8th. And finally, the board erred in holding that the merchandise in said entry and invoice referred to, is dutiable, the wool dress goods weighing four ounces to the square yard at forty-four cents per pound and 50 per cent. *advalorem* under the alleged act of October 1st, 1890, instead of being dutiable under the statutes in force prior to October 6th, 1890, namely Schedule K. – T. I. New 365 F. at thirty-five cents per pound and 40 per cent *ad valorem*, the silk embroideries at 60 per cent. *ad valorem* under the alleged act, instead of at the rate of 50 per cent *ad valorem* under Schedule L. T. I. New 383; and the wool wearing apparel at 49½ cents per pound and 60 per cent *ad valorem* under the alleged act, instead of at the rate of 40 cents per pound and 35 per cent. *ad valorem* under Schedule K. – T. I. New 366.

Complainants allege that by reason of the errors of law and fact herein complained of, they have been required to pay and have paid to the Collector of Customs at the port of Chicago, as duties upon the aforementioned merchandise the sum of five hundred dollars, in excess of the amount leviable and collectible by law.

And they therefore apply to and pray this court to review the questions of law and fact involved in the decision above complained of, and to render a judgment in favor of complainants for such sum or sums as have been collected as duties as aforesaid by the Collector of Customs at the port of Chicago upon the merchandise hereinbefore and in said entries and invoices described and set forth, in excess of the amount leviable and collectible by law as duties thereon, together with the interest thereon, and the costs of this application most wrongfully sustained.

Wherefore complainants bring their suit, etc.

MARSHALL FIELD & Co.
[By their attorney, N. W. BLISS.]

A copy of the foregoing application to the Circuit Court of the United States for a review of the questions of law and

fact involved in the decision of the Board of General Appraisers hereinbefore mentioned, and for the recovery of excess of duties amounting to, say, five hundred dollars, is this day received. JOHN M. CLARK,

Collector of Customs, Port of Chicago.

Dated at Chicago, Ill., December 31st, 1890.

Said application being indorsed "Filed this 31st day of December, A. D., 1890. Wm. H. Bradley, Clerk."

On the same 31st day of December, 1890, said applicants filed bond for costs in said cause, the same with the indorsements thereon being in the words and figures following, to-wit:

UNITED STATES OF AMERICA,
Northern District of Illinois,
Northern Division. } ss.

Circuit Court, December Term, A. D. 1890.

Marshall Field, Joseph N. Field, Harlow N. Higinbotham, John G. McWilliams, Robert M. Fair, Thomas Templeton, Lafayette McWilliams and Harry G. Selfridge,

vs.

John M. Clark, U. S. Collector of Customs at the Port of Chicago. } In Appeal.

I enter myself security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiffs of any costs ordered or adjudged to be paid by them, I hereby agree and stipulate that execution may issue against my property for any costs taxed against them.

Dated this 31st day of December, A. D. 1890.

NEZIAH W. BLISS.

Said bond being indorsed as follows: "Filed December 31st, A. D. 1890; Wm. H. Bradley, Clerk."

"$5.00 deposited by plaintiffs' attorney."

And on the same 31st day of December, 1890, said applicants filed their appeal bond in said cause, the same with the indorsements thereon being in the words and figures following, to-wit:

KNOW ALL MEN BY THESE PRESENTS: That we, Marshall Field & Co., Luther W. McConnell and Edward Nevers, of the county of Cook and State of Illinois, are held and firmly bound unto John M. Clark, United States Collector of Customs at the port of Chicago in the Northern District of Illinois; also of the same county and State, for the use of the United States, in the penal sum of one thousand dollars lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators jointly, severally and firmly by these presents.

Witness our hands and seals this 31st day of December, A. D. 1890.

The condition of the above obligation is such, that whereas the said John M. Clark, Collector, as aforesaid, did on the 14th day of December, A. D. 1890, before the Board of United States General Appraisers at New York, obtain a decision, in the matter of the Protest 2051 B of said Marshall Field & Co. against the decision of the said collector of the port of Chicago assessing certain rates of duty on imported merchandise, affirming said decision of said collector, from which said decision of the said Board of United States General Appraisers, the said Marshall Field & Co. have prayed for and obtained an appeal to the Circuit Court of the United States for the Northern District of Illinois, under section 15 of the Act of June 10th, 1890, known as the McKinley Customs Administrative Act.

Now, therefore, if the said Marshall Field & Co. shall duly prosecute their said appeal with effect, and moreover pay the amount of all damages and costs rendered and to be rendered against them in case the said decision of said Board of General Appraisers shall be affirmed in said Circuit Court of the United States for the Northern District of Illinois, then the above obligation to be void, otherwise to remain in full force and virtue.

MARSHALL FIELD & CO.,
By Harlow N. Higinbotham,
a member of the firm. [SEAL]
LUTHER W. MCCONNELL. [SEAL]
EDWARD NEVERS. [SEAL]

Approved:
H. W. BLODGETT,
Dist. Judge.

Said appeal bond being indorsed: "Filed this 31st day of Dec. A. D. 1890. WM. H. BRADLEY, Clerk."

And on the same 31st day of December, 1890, said applicants made in said cause their application for an order of said court upon the said Board of United States General Appraisers at New York for a return of the record and the evidence taken before said board, the same with the indorsements thereon being in the words and figures following, to-wit:

UNITED STATES OF AMERICA, }
Northern District of Illinois, } ss.

In the Circuit Court of the United States, December term, A. D. 1890.

In the matter of the appeal of Marshall Field & Co., from the decision of the Board of General Appraisers at New York.

General No. 21,880.
Term No. 606.

Marshall Field & Co., complainants in the above entitled cause, hereby make application to this honorable court for an order upon the Board of United States General Appraisers at New York, to return forthwith to this court the record of the evidence taken by them, together with a certified statement of the facts involved in the case, and their decision thereon.

MARSHALL FIELD & CO.,
By their Attorney,
N. W. BLISS.

A copy of the foregoing application for an order to return forthwith to this court the record and the evidence taken in this cause is this day received.

THOMAS E. MILCHRIST,
District Attorney.

Chicago, December 31st, 1890.
(Endorsed)
Filed Dec. 31, 1890.

WM. H. BRADLEY, Clerk.

On the same 31st day of December, 1890, upon said application, the following order was made upon the Board of United States General Appraisers at New York for said return of the record and the evidence taken, which order is in the words and figures following, to-wit:

UNITED STATES OF AMERICA, } ss.
Northern District of Illinois. }

In the Circuit Court of the U. S. for the Northern District of Illinois.

Wednesday, December 31, 1890.

In the matter of appeal of Marshall Field & Co. from the decision of the Board of General Appraisers. } General No. Term No.

Marshall Field & Co. having by their attorney, N. W. Bliss, filed in the office of the clerk of said court, a statement of errors of law and fact, complained of by them in the matter of classification of certain merchandise, and the rate of duty thereon said to have been covered by entries at the custom house in the port and district of Chicago, as follows, viz:

Consumption Entry No. 8913. Vessel. "La Champagne." Date of Payment. October 10th, 1890.

Protest 2051, B. (6043).

And it having been made to appear that a copy of such statement has been duly served on the collector, as required by law, it is therefore ordered that the Board of General Appraisers return forthwith, to this court, the record and the evidence taken by them, together with a certified statement of the facts involved in the case, and their decisions thereon.

H. W. BLODGETT,
District Judge.

On the 8th day of January, 1891, in the obedience to said order of said United States Circuit Court for the Northern District of Illinois, said United States Board of General Appraisers at New York made their return of the record, &c., and the same was on the 10th day of January, 1891, filed in the office of the clerk of said court the same with the indorsements thereon being in the words and figures following, to-wit:

Suit 1025.

United States of America, } ss.
Northern District of Illinois, }

In the Circuit Court of the United States. For the Northern District of Illinois.

In the matter of the appeal of Marshall Field & Co. from the decision of the Board of General Appraisers. } Return of the Board of General Appraisers.

The Board of General Appraisers, in compliance with the order of the court in the above case, make the following return of the record, evidence and facts, and their decision thereon:

First. They state that on the 5th of November, 1890, the letter hereto attached, marked Exhibit A, was received from the Collector of Customs at Chicago, transmitting the protest No. $\frac{20513}{6043}$ of Marshall Field & Co. (Exhibit B) against his decision as to the rate of duty chargeable on certain wool dress goods, silk embroideries, &c., imported by them per "Champagne" October 10th, 1890.

Second. That on the 14th of December, 1890, said protest was duly considered and determined by the Board of General Appraisers, consisting of George H. Sharpe, Henderson M. Somerville and Charles H. Ham. A copy of their decision is hereby annexed, marked Exhibit C. That no evidence was taken by the board in the consideration of said case. That all the facts involved in the case are fully stated in the opinion and decision above mentioned.

GEORGE H. SHARPE,
HENDERSON M. SOMERVILLE,
GEO. C. TICHENOR.
Board of U. S. General Appraisers.

Office of the Board of United States General Appraisers,
534 Canal street, New York. January 8, 1891.

PORT AND DISTRICT OF CHICAGO,
Collector's Office.

EXHIBIT A.

Nov. 3d, 1890.

*Sir:*—I have the honor to transmit herewith the appeal of Messrs. Marshall Field & Co., No. $\frac{20513}{6043}$ from the decision of this office assessing duty at the rate of forty-four cents, fifty per cent., sixty per cent., forty-nine and a half cents, sixty per cent. on certain wool dress goods, silk embroideries &c., imported by them, ex S. S. "Champagne" into the port of New York; thence transported to this port under Immediate Transportation Entry number 19,622, Consumption Entry number 8,913.

The requirements of Sections 2931 and 2932, Revised Statutes of the United States, have been complied with by the appellants.

I desire to refer to Synoptical Series, decision ———, and Heyl, act of October 1, 1890.

Protest and invoice are enclosed herewith.

Very respectfully,

JOHN M. CLARK,
Collector.

To the Board of General Appraisers, New York.

EXHIBIT B.

CHICAGO, Oct. 30th, 1890.

THE HON. JOHN M. CLARK, Collector of Customs, Chicago.

*Dear Sir:*—We hereby express our dissatisfaction with your decision of October 20th, both as to the rates and amount of duty collected on certain wool dress goods weighing over four ounces to the square yard assessed at 44 cents per lb., and 50 per cent. ad valorem, on silk embroideries assessed at 60 per cent. ad valorem, and on wool wearing apparel assessed at 49½ cents per lb. and 60 per cent. ad valorem. These goods were contained in cases No. 11,172 and 11,173, imported into the port of New York, ex. S. S. "La Champagne," on the 6th day of October, 1890, transported to this port by the American Express Co. under Immediate Transportation Entry No. 19,622, Consumption Entry No. 8,913, entered and duties paid October 10th, 1890.

We claim that these goods are dutiable under the provisions of the Tariff Act of March 3d, 1883; the wool dress goods weighing over four ounces to the square yard at the rate of 35 c. per lb. and 40 per cent. ad valorem under schedule K. T. I. new 365 F., the silk embroideries at the rate of 50 per cent. ad valorem under schedule L. T. I. new 383, and the wool wearing apparel at the rate of 40 c. per lb. and 35 per cent. ad valorem under schedule K. T. I. new 366.

1st. Because by the passage of the McKinley Bill (H. R. 9416) the old Tariff Law of 1883 was not repealed.

2nd. Because the alleged act entitled "An Act to reduce the revenue and equalize duties on imports and for other purposes," purporting to have been approved October 1st, 1890, never passed the House of Representatives and the Senate.

3rd. Because the bill which did pass the House of Representatives and Senate has never been presented to the President according to Section VII. of the Constitution of the United States, and has never been approved or signed by him.

The conference committee restored section 30 of the bill H. R. 9416 which appears under the section in the confer-

ence report, and by virtue of which the above became part of the bill. In the official copy of the bill the restored section is not to be found. We claim that the restored clause of section 30 relating to drawbacks, constitutes an essential part of the bill as finally agreed upon by the conference committee, and that the document signed by the president, as the McKinley Bill, or H. R. 9416, was not, in fact, the bill as it passed the House of Representatives and Senate, and that, consequently, the act is null and void, and that, as a matter of fact, no Tariff Bill has been signed by the President according to Section VII of the Constitution. We therefore ask for a refund of duties exacted in excess amounting to $328.23.

Yours respectfully,

(Signed) [MARSHALL FIELD & Co.
By KENNETH BARNHART, Att'y.]

"EXHIBIT C."

(G. A. 203.) Constitutionality of the act of October 1, 1890. New York, December 14, 1890.

Before the Board of United States General Appraisers, at New York, December 14, 1890.

In the matter of the protest of 2,051 B of Marshall Field & Co., against the decision of the collector at the port of Chicago, assessing certain rates of duty on imported merchandise.

Opinion by SOMERVILLE, General Appraiser.

The question raised in this case is one of great importance, and we are fully aware of the fact that its decision is pregnant with results of the gravest character.

The appellants in their protest assail as unconstitutional the act of Congress entitled, "An act to reduce the revenue and equalize duties on imports, and for other purposes," approved October 1, 1890, commonly known as the McKinley tariff act. It is insisted that this act is void and of no effect, and for this reason, that the duties assessed on certain imported merchandise under its provisions were illegally assessed; that the tariff act of March 3, 1883, still remains in full force, and that the rates of duty imposed by it continue unrepealed.

The first ground upon which this contention is based is, that an important and material part of the measure, as enacted by Congress, was omitted, or clerically expunged in the engrossed law as signed by the President. The law as passed, therefore, it is said, was never approved, and the law

as approved was never passed, and this variance, it is urged, vitiates not only the omitted section, but the entire law.

The proceedings of Congress, of which we are required to take judicial notice, bear out the fact that the bill which passed both the House of Representatives and the Senate contained the following clause as part of section 30:

Sec. 30. "That on all original and unbroken factory packages of smoking and manufactured tobacco and snuff, held by manufacturers or dealers at the time the reduction herein provided for shall go into effect, upon which the tax has been paid, there shall be allowed a drawback or rebate of the full amount of the reduction, but the same shall not apply to any case where the claim has not been presented within sixty days following the date of reduction, and such rebate to manufacturers may be paid in stamps at the reduced rate; and no claim shall be allowed or drawback paid for a less amount than $5.

"It shall be the duty of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to adopt such rules and regulations, and to prescribe and furnish such blanks and forms as may be necessary to carry this section into effect. For the payment of the rebates provided for in this section there is hereby appropriated any money in the treasury not otherwise appropriated."

The Senate opposed this clause of the law, and receded from their opposition only after a conference was ordered.

In engrossing the bill the clause in question was omitted apparently by clerical error, and the President signed the engrossed bill in its defective condition.

In deciding upon the legal validity of statutes, assailed for unconstitutionality, courts always approach the consideration of the subject with great caution. It is a settled maxim that every law will, in the first instance, be presumed to be constitutional until the contrary is made to clearly appear. All reasonable doubts must be resolved in favor of the validity of the given law. In other words, to be in doubt is to maintain the law. Cooley on Const. Lim. (6th Ed.) 216.

It may be conceded that a bill can become a law only when it has gone through all the forms made necessary by the Constitution of the United States to give it validity and force as such. It must be passed by both houses of Congress, and approved by the President, or, in the absence of such approval, pass through other forms prescribed by the Constitution. * * *

In some adjudged cases the rule is broadly stated to be, that if a bill, which is passed by the General Assembly of the State, varies materially in substance and legal effect from that which is approved by the Governor, then there exists such a want of legal and actual identity between the bill passed and the one approved, as that neither of them acquires the force of a valid and constitutional enactment. *Jones* v. *Hutchinson*, 43 Ala. 721; *Moody* v. *The State*, 48 Ala. 115.

In the case of *Moody* v. *Randolph*, 77 Ala. 577, the Supreme Court of Alabama, following this principle, adjudged a revenue law to be void, which had been passed by both branches of the Legislature, because the enrolled bill, as approved by the Governor, by clerical omission failed to contain a very important and material clause, as to which there had been a controversy between the two houses, resulting in an agreement after conference. Two of the judges concurred in the opinion, but Mr. Justice Stone doubted the correctness of the conclusion, that the entire law was vitiated by the omission, holding however that the defect rendered void the omitted clause.

THE SAME QUESTION

in effect again arose before the same court in the later case of *Stein* v. *Leeper*, 78 Ala. 517. There a bill had been passed by both houses of the Alabama Legislature prohibiting the sale of spirituous liquors in a large number of specified localities.

In enrolling the bill one of these localities was omitted from the title through clerical mistake. This omission operates legally to produce the same effect as if it had occurred in the body of the bill, in view of the constitutional requirement that "each law shall contain but one subject which shall be clearly expressed in its title."

This imperfect bill was approved by the Governor. The court held that the omission vitiated the law only partially, and not in toto—that it operated to expunge the particular locality omitted, but that the residue of the law was valid and would be given full force and operation, in execution of what appeared to be the concurrence of the legislative and executive intention, and to the extent of such concurrence. The court was of opinion that provisions relating to the different localities were not so connected with or dependent on each other, but that the law could be executed in substantial conformity with the legislative intention by giving

it validity so far as approved. "After expunging the unconstitutional portions," it was said, "the remaining parts are complete in themselves and capable of being executed in accordance with the legislative intent. As to the remaining part of the statute, there was a concurrence of both houses of the General Assembly, and of the Executive." This was clearly intended as a modification of the doctrine announced in the case of *Moog* v. *Randolph*, *supra*.

This doctrine seems to be in accord with the settled rule adopted by the courts in passing on laws which are in part constitutional and in part unconstitutional. Legislative enactments are not necessarily adjudged void by reason of embracing or being associated in the same act with other parts which are unconstitutional. The test is thus formulated by Judge Cooley: "If, when the unconstitutional part is stricken out, that which remains is complete in itself and capable of being executed in accordance with the apparent legislative intent, wholly independent of that which was rejected, it must be sustained." Cooley Cont. Lim. (6th ed.) 210–211. It is only when two parts are "so mutually connected with and dependent on each other as conditions, considerations, or compensations for each other as to warrant a belief that the Legislature intended them as a whole, and that, if all could not be carried into effect, the Legislature would not pass the residue independently, and some parts are unconstitutional;" that all the provisions must fall together. *Allen* v. *Louisiana*, 103 U. S. 80. It was on this principle that the Supreme Court of the United States in *Tiernan* v. *Rinker*, 102 U. S. 123, held that a State law forbidding the sale of spirituous might be void as to all imported liquors and valid as to all others. Numbers of other analogous cases could be cited, but a further elaboration of the subject in this opinion is not deemed necessary.

The portion of the enactment under consideration which has been omitted from the law approved by the President was but a single section. It related to a separate and severable subject, that of rebates on tobacco. It constitutes but one of fifty-five sections of the entire act. In this law there are fourteen voluminous schedules of subjects and 761 separate paragraphs, including the free list of 289 paragraphs. The number of articles embraced are innumerable, and beyond arithmetical computation.

The question is: Shall the whole law fail as unconstitutional and void, because of a clerical omission of one section relating to the one article of tobacco?

The inquiry is not entirely free from doubt. There are forcible reasons to be urged on both sides of the contention. But as we have said, under a well settled canon of construction, to be in doubt is to sustain the law. We are not sufficiently clear in the conviction that the clerical omission of this section from the approved bill, under the rules of construction which are to guide us, should vitiate the entire law. The more conservative view is to hold that it renders invalid the omitted section only, and we accordingly so decide.

There is another ground of objection to the law which we need notice but briefly. It is contended that section 3 of the law is also unconstitutional because it invests in the President of the United States the power to suspend laws and impose duties within his discretion. We construe the objection to be that the Chief Executive is vested with legislative power contrary to the provisions of article 1, section 1, of the Federal Constitution, which provides that "all legislative powers shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Section 3 has reference to securing reciprocal trade with foreign countries, which produce and export sugar, molasses, coffee, tea, and other named articles, which are admitted free of duty into the United States.

It is provided that so often as the President shall be satisfied that any such foreign government "imposes duties or other exactions upon the agricultural or other products of the United States," which he may "deem to be reciprocally unequal and unreasonable," in view of the free entry of the articles above named, he "shall have the power and it shall be his duty to suspend by proclamation to that effect the provisions of this act" relating to the free introduction of said articles, "for such time as he may deem just," and in such case and during such suspension "certain specific duties shall be levied, collected, and paid" upon such articles of sugar, molasses, coffee, etc., the product of or exported from such foreign countries.

The authority vested in the executive is the power to suspend the operation of one law with a legislative declaration that another law fixed in its terms shall thereupon go immediately into effect. It has been the practice from the foundation of the Government to confer on the President of the United States the power to suspend laws, or by proclamation to put other laws in operation on certain contingencies

to be determined by him. This is not deemed a vesting of legislative power in such officer. It is the familiar case of making a law, certain and fixed in its terms, operative on a named contingency, the existence of which is to be determined by the President. The statute books, Federal and State, are filled with laws of this character, and their validity has generally been sustained, unless prohibited by the particular Constitution of the State where they were enacted.

Moreover, the invalidity of section 3 would not make the entire tariff act fall under the rule announced in the first part of this opinion. This section might be stricken out, and effect could still be given to the remainder of the law, so as to substantially effectuate the general scope of the legislative intent.

The decision of the collector is affirmed.

The invoice received with this protest is herewith returned.

GEORGE H. SHARPE,
HENDERSON M. SOMERVILLE,
CHARLES H. HAM,
Board of U. S. General Appraisers.

Collector of Customs, Chicago, Ill.
(1 Inclosure.)
A true copy.
Attest:
J. R. LAKE,
Chief Clerk Board of U. S. General Appraisers.
Endorsed filed Jan'y 10, 1891.
WM. H. BRADLEY, Clerk.

Afterwards, to-wit: on the 14th day of January, 1891, there was filed in said clerk's office a certified copy of the order of December 31, 1890, in said entitled cause, which said certified copy of order, together with the acceptance of service of George C. Tichenor, General Appraiser, indorsed thereon, are in words and figures following, to-wit:

UNITED STATES OF AMERICA, }
Northern District of Illinois. }

In the Circuit Court of the United States for the Northern District of Illinois, December term, 1890. Wednesday, December 31, 1890.

Present: Hon. Henry W. Blodgett, District Judge.

In the matter of the appeal of Marshall Field & Co., from the decision of the Board of General Appraisers. General No. Term No.

Marshall Field & Co., having by their attorney, N. W. Bliss, filed in the office of the clerk of said court, a statement, or errors of law and fact, complained of by them in the matter of classification of certain merchandise and the rate of duty thereon, said to have been covered by entries at the custom house in the port and district of Chicago, as follows, viz:

| Consumption Entry | Vessel | Date of Payment. |
|---|---|---|
| No. 8,913. | "La Champagne." | Oct. 10th, 1890. |

PROTEST No. 2,051—B. (6,043.)

And it having been made to appear that a copy of such statement has been duly served on the collector as required by law, it is therefore ordered that the Board of General Appraisers return forthwith to this court the record and the evidence taken by them, together with a certified statement of the facts involved in the case and their decisions thereon.

Northern District of Illinois, ss.

I, William H. Bradley, clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the order entered of record in said court on the 31st day of December, A. D. 1890, in the matter of the appeal of Marshall Field & Co., from the decision of the Board of General Appraisers, as the same appears from the original record of said court, now remaining in my custody and control.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said District, Northern Division, this 31st day of December, A. D. 1890.

[SEAL]

WM. H. BRADLEY, Clerk.

A copy of the foregoing order of the Circuit Court of the United States for the Northern District of Illinois, for return to that court of the record, evidence, statement of facts and decisions, as therein stated, is this day received by us.

January 5, 1891.

GEO. C. TICHENOR,
*General Appraiser.*

(Indorsed:)

Filed this 14th day of January, A. D. 1891.

WM. H. BRADLEY,
*Clerk.*

On the 21st day of January, 1891, said applicants made in said cause their application for an order of reference to take and return further evidence in said cause, which application with the indorsements thereon is in the words and figures following, to-wit:

---

UNITED STATES OF AMERICA, Northern District of Illinois, } ss. In the Circuit Court of the United States, December term, 1890.

In the matter of the appeal of Marshall Field & Co., from the decision of the Board of General Appraisers at New York. } General No. Term No.

Marshall Field & Co., complainants in the above entitled cause, hereby make application to this honorable court for an order of reference to one of said General Appraisers, as an officer of this court, to take and return to this court such further evidence as may be offered by the secretary of the treasury, collector, importer, owner, consignee or agent, the same to be done and returned within sixty days from this date.

MARSHALL FIELD & CO.
By their attorney,
N. W. Bliss.

January 21, 1891.

A copy of the foregoing application for an order of reference to take and return further evidence in the above entitled cause is this day received.

Chicago, January 21, 1891.

THOMAS E. MILCHRIST.

(Endorsed:) Filed Jan'y 21, 1891.
WM. H. BRADLEY, Clerk.

On the 21st day of January, 1891, there was filed in said clerk's office a stipulation in said entitled cause, which said stipulation is in the words and figures following, to-wit:

UNITED STATES OF AMERICA, NORTHERN DISTRICT OF ILLINOIS, ss.

In the Circuit Court of the United States, December term, 1890.

In the Matter of the Appeal of Marshall Field & Co., from the decision of the Board of General Appraisers at New York.

General No. 21,880.
Term No. 606.

In the matter of the order of reference to Charles H. Ham, one of the board, to take and return further evidence in above cause.

It is hereby stipulated and agreed that in taking further evidence in the above entitled cause, complainants or either party interested may introduce without objection on the part of the Government, the congressional records of proceedings, and all reports of committees, conference reports, and all bills and other papers printed by authority of Congress, having reference to house bill No. 9416, entitled, "An act to reduce the revenue and equalize duties on imports and for other purposes," known as the McKinley Tariff Act, and to all parts and portions of the same, and particularly with reference to section 30 of said bill, known as the Tobacco Rebate clause, with reference to the mode of passage of the same by Congress, and the presentation to and, signing of the same by the President, and that the same shall be received as competent evidence of the facts shown thereby in this cause.

N. W. Bliss,
Atty. for Applicants.

January 21st, 1891.

Thomas E. Milchrist,
United States Attorney.

(Indorsed.)
Filed Jan'y 21, 1891.

Wm. H. Bradley,
Clerk.

On the same day, to wit, on the 21st day of January, 1891, in the December term of said court, 1890, in the record of the proceedings in said entitled cause, before Hon. Henry W. Blodgett, District Judge, is the following entry, to wit:

United States of America, } ss.
Northern District of Illinois, }

In the Circuit Court of the United States, December term 1890.

In the matter of the appeal of Marshall Field & Co., from the decision of the Board of General Appraisers, at New York.

Marshall Field & Co., complainants, in the above entitled cause, having, by their attorney, N. W. Bliss, made application to this court for an order of reference to take and return further evidence as recited therein, and it having been made to appear that a copy of such application has been duly served on the District Attorney for the Northern District of Illinois. It is therefore ordered that Chas. H. Ham, one of said Board of General Appraisers, be and he is hereby appointed an officer of this court for such purpose, and that the said cause be and the same is hereby referred to him to take and return to this court such further evidence as may be offered by the secretary of the treasury, collector, importer, owner, consignee or agent, within sixty days hereafter, under such stipulations and agreements as may be entered into in this regard between the parties complainant herein and the District Attorney of the United States for the Northern District of Illinois.

Afterward, to wit: On the fifth day of February, 1891, came Charles H. Ham, one of the General Appraisers, and filed in said clerk's office his report, in said entitled cause, which said report is in the words and figures following, to wit:

STIPULATION.

UNITED STATES OF AMERICA, } ss
Northern District of Illinois. }
In the Circuit Court of the United States, December term, 1890.

| | |
|---|---|
| In the matter of the appeal of Marshall Field & Co. from the decision of the Board of General Appraisers at New York | General No. 21,880. Term No. 606. |

In the matter of the order of reference to Charles H. Ham, one of the board, to take and return further evidence in above cause. It is hereby stipulated and agreed that in taking further evidence in the above entitled cause, complainants or either party interested may introduce, without objection on the part of the Government, the Congressional Records of Proceedings, and all reports of committees, conference reports and all bills and other papers printed by authority of Congress, having reference to House Bill No. 9416, entitled, "An Act to reduce the revenue and equalize duties on imports and for other purposes," known as the McKinley Tariff Act, and to all parts and portions of the same, and particularly with reference to section 30 of said bill, known as the Tobacco rebate clause with reference to the mode of

passage of the same by Congress and the presentation to and signing of the same by the President, and that the same shall be received as competent evidence of the facts shown thereby in this cause.

January 21st, 1891.

THOS. E. MILCHRIST,
United States Attorney.

(Endorsed)

Filed Jan'y 21, 1891.
WM. H. BRADLEY, Clerk.

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois.

Wednesday, January 21, 1891.

Present, HON. HENRY W. BLODGETT, District Judge.

In the matter of the appeal of Marshall Field & Co. from the decision of the Board of General Appraisers at New York.

Marshall Field & Co., complainants in the above entitled cause, having by their attorney, N. W. Bliss, made application to this court for an order of reference to take and return further evidence as recited therein, and it having been made to appear that a copy of such application has been duly served on the District Attorney for the Northern District of Illinois. It is therefore ordered that Chas. H. Ham, one of said Board of General Appraisers, be and he is hereby appointed an officer of this court for such purpose, and that the said cause be and the same is hereby referred to him to take and return to this court such further evidence as may be offered by the secretary of the treasury, collector, importer, owner, consignee or agent within sixty days hereafter, under such stipulations and agreements as may be entered into in this regard between the parties complainant herein and the District Attorney of the United States for the Northern District of Illinois.

NORTHERN DISTRICT OF ILLINOIS, ss.

I, William H. Bradley, Clerk of the Circuit Court of the United States, for said Northern District of Illinois, do hereby certify the above and foregoing to be true and correct copies of the stipulation filed January twenty-first, 1891, and the order entered of record in said court on the 21st day of January, A. D. 1891, in the matter of the appeal of Marshall Field & Co., from the decision of the Board of General Appraisers at New York, as the same appears from the original

records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said District, Northern Division, this 26th day of January, A. D. 1891.

[SEAL.] WM. H. BRADLEY, Clerk.

In the Circuit Court of the United States for the Northern Division of the Northern District of Illinois. December Term, A. D. 1890. } ss.

In the matter of the appeal of Marshall Field & Co. from the decision of the Board of General Appraisers at New York.

The undersigned, Charles H. Ham, a member of the Board of General Appraisers at New York, to whom has been referred the above entitled cause, under the order of said court and stipulation with the district attorney of said district, certified copies of which are hereto attached, begs leave respectfully to report and hereby makes return of the further evidence taken in said cause under and by virtue of said order and stipulation as follows, to-wit:

OFFICE OF BOARD OF UNITED STATES GENERAL APPRAISERS, 534 Canal Street, New York, January 30, 1891.

Appellants by their attorney, N. W. Bliss, produced and offered in evidence the following bills, acts, conference and other reports, congressional records of proceedings and other papers printed by authority of Congress, with the right to either party to read, as taken in evidence hereunder, any and all parts and portions thereof having reference to House Bill No. 9416 entitled, "An act to reduce the revenue and equalize duties on imports, and for other purposes," known as the McKinley Tariff Act, and particularly with reference to section 30 of said bill, known as the Tobacco rebate clause, with reference to the mode of passage of the same by Congress and the presentation to and signing of the same by the President and to make the same a part of the record as competent evidence in said cause under said order and stipulation, to wit, said papers numbered by me in red ink as on margin hereof:

No. 1. H. R. 9416 (Report No. 1466): A Bill to reduce the revenue, &c., in the House of Representatives, April 16th, 1890.

No. 2. H. R. 9416 in the Senate: An Act to reduce the revenue, &c., as reported by Mr. Morrill, with amendments, September 9th, 1890.

No. 3. Tariff of 1890. Conference Report with Bill H. R. 9416.

No. 4. Congressional Record, Vol. 21, No. 237.
No. 5. " " Vol. 21, No. 238.
No. 6. " " Vol. 21, No. 239.
No. 7. " " Vol. 21, No. 240.

No. 8. Report No. 1466 to accompany H. R. 9416, April 16th, 1890.

No. 9. An Act to reduce the revenue and equalize duties on imports and for other purposes. Public No. 330.

No. 10. Annual report of the secretary of the treasury on the state of the finances for 1889.

No. 11. Congressional Record, Vol. 22, pages 217, 275 & 582.

Witness my hand,

CHARLES H. HAM,
One of the Board of U. S. General Appraisers, acting as an officer at the Court.

Endorsed: Filed Feb'y 5, 1891.

WM. H. BRADLEY, Clerk.

The following are copies of the various exhibits attached to the foregoing report by Charles H. Ham, of further evidence taken, as numbered in said report, excepting such portions thereof as are omitted by direction. Exhibit No. 1, "H. R. 9416 (Report No. 1466) in the House of Representatives, April 16, 1890, reported from the committee of ways and means:

"A bill to reduce the revenue and equalize duties on imports and for other purposes (page 141). Section 29: That on and after the first day of January, eighteen hundred and ninety-one, the internal taxes on smoking and manufactured tobacco shall be four cents per pound and on snuff four cents per pound.

"Sec. 30. That on all original and unbroken factory packages of smoking and manufactured tobacco and snuff, held by manufacturers and dealers at the time the reduction herein provided for shall go into effect, upon which the tax has been paid, there shall be allowed a drawback or rebate of

the full amount of the reduction, but the same shall not apply in any case where the claim has not been presented within sixty days following the date of reduction; and such rebate to manufacturers may be paid in stamps at the reduced rate; and no claim shall be allowed or drawback paid for a less amount than ten dollars. It shall be the duty of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to adopt such rules and regulations and to prescribe and furnish such blanks and forms as may be necessary to carry this section into effect."

Exhibit No. 2. H. R. 9416. In the Senate of the United States, an act to reduce the revenue, &c., reported by Mr. Morrill, with amendments, September 9th, 1890, ordered to be printed as amended in the Senate, and read the third time, viz.: Omit the parts struck through and insert the parts printed in italics.

(Page 163), (424), Sec. 29. That on and after the first day of October, eighteen hundred and ninety, or within sixty days after the approval of this act, the internal taxes on smoking and manufactured tobacco shall be four cents per pound and on snuff four cents per pound.

(Pages 163 and 164), (425), Sec. 30. "That on all original and unbroken factory packages of smoking and manufactured tobacco and snuff, held by manufacturers or dealers at the time the reduction herein provided for shall go into effect, upon which the tax has been paid, there shall be allowed a drawback or rebate of the full amount of the reduction, but the same shall not apply in any case where the claim has not been presented within sixty days following the date of reduction; and such rebate to manufacturers may be paid in stamps at the reduced rate; and no claim shall be allowed or drawback paid for a less amount than five dollars. It shall be the duty of the commissioner of internal revenue, with the approval of the secretary of the treasury, to adopt such rules and regulations and to prescribe and furnish such blanks and forms as may be necessary to carry this section into effect. For the payment of the rebates provided for in this section there is hereby appropriated any money in the treasury not otherwise appropriated."

Exhibit No. 3. Conference Report with Bill H. R. 9416 (page 174), (448), Sec. 29. That on and after the first day of October, eighteen hundred and ninety, or within sixty days after the approval of this act, the internal taxes on smoking and manufactured tobacco shall be four cents per pound and on snuff four cents per pound. (Page 24.)

Amendment numbered 448. That the House recede from its disagreement to the amendment of the Senate numbered 448 and agree to the same with an amendment as follows. Striking out the section and inserting in lieu thereof the following:

Sec. 30. That on and after the first day of January, eighteen hundred and ninety-one, the internal taxes on smoking and manufactured tobacco shall be six cents per pound, and on snuff six cents per pound.

(Page 175.) Sec. 30. That on and after the first day of January, eighteen hundred and ninety-one, the internal taxes on smoking and manufactured tobacco shall be six cents per pound, and on snuff six cents per pound.

Pages 175 and 176, 449, Sec. 30. That on all original and unbroken factory packages of smoking and manufactured tobacco and snuff, held by manufacturers or dealers at the time the reduction herein provided for shall go into effect, upon which the tax has been paid, there shall be allowed a drawback or rebate of the full amount of the reduction, but the same shall not apply in any case where the claim has not been presented within sixty days following the date of reduction; and such rebate to manufacturers may be paid in stamps at the reduced rate; and no claim shall be allowed or drawback paid for a less amount than five dollars. It shall be the duty of the commissioner of internal revenue, with the approval of the secretary of the treasury, to adopt such rules and regulations and to prescribe and furnish such blanks and forms as may be necessary to carry this section into effect. For the payment of the rebates provided for in this section there is hereby appropriated any money in the treasury not otherwise appropriated.

Conference restores section 30.

(Pages 1 and 2.) The committee of conference on the disagreeing votes of the two houses on the amendments of the senate to the bill (H. R. 9416), "To reduce the revenue and equalize duties on imports and for other purposes" having met, after full and free conference have agreed to recommend, and do recommend, to their respective houses as follows:

That the senate recede from its amendment numbered 449.

Exhibit 5. (Page 11, 569) Mr. McKinley. Mr. Speaker: I ask for the adoption of the conference report. Mr. McMillan: And upon that I demand the yeas and nays. The

yeas and nays were ordered. The question was taken, and there were yeas, 152; nays, 81; not voting, 93. (Page 11, 570.) So the conference report was agreed to.

Exhibit 7. (Page 11, 707.) The Vice President: The question is on concurring in the conference report. Mr. Cockrell: Upon that I ask the yeas and nays. The yeas and nays were ordered, and the secretary proceeded to call the roll. The result was announced: Yeas, 33; nays, 27; absent, 24. (Page 11, 708.) So the report was concurred in.

Exhibit 8. Report 1466, to accompany H. R. 9416 (page 20). The committee recommend a reduction of the tax on smoking and manufactured tobacco from eight cents to four cents per pound which will effect a reduction of the revenue of $8,538,449.97. They also recommend a reduction of the tax on snuff from eight to four cents per pound, which will effect a reduction of the revenue of $322,544.78½.

Exhibit 9. (Public No. 330) (page 1). An act to reduce the revenue and equalize duties on imports and for other purposes. Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled (page 58). Sec. 30. That on and after the first day of January, eighteen hundred and ninety-one, the internal taxes on smoking and manufactured tobacco shall be six cents per pound, and on snuff six cents per pound.

(Page 65) approved, October 1st, 1890.

Exhibit 11. (Page 217.) Mr. McKinley. I would like to ask the gentleman from Vermont (Mr. Grout) to yield to me for a single moment while I make a request for unanimous consent for the consideration of what is known as the rebate bill on tobacco. It will take but a moment, I imagine.

I ask the clerk to read the bill which I send to the desk. The clerk read as follows:

"A bill (H. R. 12447) to authorize the payment of drawback or rebate in certain cases.

"Be it enacted, etc., That on all original and unbroken factory packages of smoking and manufactured tobacco and snuff, held by manufacturers or dealers at the time the reduced tax as provided for in an act to reduce the revenue and equalize duties on imports, and for other purposes, approved October 1, 1890, shall take effect, upon which the tax has been paid, there shall be allowed a drawback or rebate of the full amount of the reduction, but the same shall not apply in any case where the claim has not been presented within sixty days following the date of reduction;

and such rebate to manufacturers may be paid in stamps at the reduced rate; and no claim shall be allowed or drawback paid for a less amount than $5. It shall be the duty of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to adopt such rules and regulations and to prescribe and furnish such blanks and forms as may be necessary to carry this act into effect. For the payment of the rebates provided for in this act there is hereby appropriated any money in the treasury not otherwise appropriated."

The bill was read a first and second time, ordered to be engrossed and read a third time; and being engrossed, it was accordingly read a third time and passed.

Mr. McKinley moved to reconsider the vote by which the bill was passed; and also moved that the motion to reconsider be laid upon the table. The latter motion was agreed to.

Exhibit 11. (Pages 274 and 275.) Mr. Aldrich. Mr. President, I ask unanimous consent that the Senate proceed with the consideration of House Bill 12447 being the so-called Tobacco Rebate Bill. By unanimous consent, the Senate as in committee of the whole proceeded to consider the bill (H. R. 12447) to authorize the payment of drawback or rebate in certain cases. The bill was reported to the Senate without amendment, ordered to a third reading, read the third time and passed.

Exhibit 11. (Page 582.) A message in writing was delivered to the house by Mr. Pruden, one of his secretaries, who also announced the approval of bills of the following titles: An act (H. R. 12447) to authorize the payment of drawback or rebate in certain cases.

On the 5th day of February, 1891, there was filed in said cause a copy of invoice of the goods upon which the duties in question were assessed, in the words and figures following, to-wit:

Invoice No. 1173.

PARIS, September 25th, 1890.

MESSRS. MARSHALL FIELD & CO.,

To Marshall Field & Co., Dr.

Invoice of goods forwarded to Fred Wood, Havre, consigned to American Express Co., New York, for immediate transportation, under bond, to Chicago.

## Goods per steamer "Champagne" per Havre.

| | No. Pcs. | Dozens | Metres | | |
|---|---|---|---|---|---|
| M [F] & Co. | | E. Meyer & Co. | | | |
| In bond Chicago 6111 | | | | | |
| 1 Wool fancy 46-47 | O.K. 11th | $7 30 | (319) | | |
| 14 6118 1 Wool fancy do | 5K000 | 7 30 | $14 60 | $9 75 | 142 35* |
| 11172 6223 1 Wool fancy do | | | 7 30 | 8 75 | 63 90‡ |
| Dept. 3-28 6981 | | | 9 20 | 7 00 | 64 40‡ |
| 1 Cotton velvet 23 do | | | | | |
| | | | | | 270 65 |
| do do | Discount, 5 per cent., | | | | 13 50 275 15 |

"Copy."
‡All wool dress goods over 4 oz., 44-50.
‡Cotton velvet printed, 40 per ct.

| | | | | | |
|---|---|---|---|---|---|
| Dept. 23-28 Dalsace ouck neven | | | | | |
| B. 6477 1 Set embroidery, grey | | | | 125 00 | |
| B. 6474 1 Set embroidery on black tulle, | | | | 280 00 | ‡ |
| B. 6520 1 Set embroidery on white tulle, | | 3 05 | 1 10 | 335 50 | |
| | | | | 740 50 | |
| | Discount, 5 per ct., | | | 37 00 | |
| | | | | 703 50 | |
| | Discount, 2 per ct., | | | 14 05 | 689 45 |

‡Mf Hand, 60 per ct.

| | | Worth. | | |
|---|---|---|---|---|
| 6099 1 Wool cloth dress, 2K200 | | | 9 00* | |
| *Wool Wg. Appl., 49½ 60. | Discount, 5 per ct. (No. 5), | | 45 | 855 00 |
| | Case and Packing | | | 5 00 |
| | Amount brought forward | | | 1806 60 |

H. G. Selfridge W. L. Levilion
Care
M. [F] & Co., for Mr. H. G. Selfridge. Metres.
In Bond,
Chicago. 11173

For Miss Rose

| No. | | | | |
|---|---|---|---|---|
| 3514 | 1 Ps. Silk ivory silk wedding dress | 1400 | | |
| 3515 | " Broche dress w head d's | 1200 | | Silk Wg. Appl. |
| 3516 | " Tourquoise, do | 1200 | | 60 per ct. |
| 3517 | " Bengaline tea gown | 800 | | |
| 3518 | " Velvet costume | | | |
| | " Mantle | 1500 | | |
| | 1 Muff to match | | | |
| 3519 | 1 Blue cloth costume | | | |
| | 1 " Jacket to match | 6 750 | | Wool Wg. Appl. |
| | 1 Muff to match | | | 49½ 60 per ct |
| 3520 | 1 Bonnett | 70 | | Silk Wg. Appl. |
| | 1 Bonnett | 110 | | 60 per ct. |

| | | | | | |
|---|---|---|---|---|---|
| Mrs. Buckingham Mrs Chandler | 3521 | 1 Heliotrope cloth dress<br>1 Mantle to match<br>1 Muff to match | 6 | 850 | Wool Wg. Appl. 60 per ct. |
| | | 1 Bonnett to match | | 100 | Silk Wg. Appl. 60 per ct. |
| | 3522 | 1 Silk Broche dress | | 1400 | |
| | 3523 | 1 Grey cloth dress<br>1 Cloak to match<br>1 Muff to match | | 750 | Wool Wg. Appl. 49½ 60 per ct. |
| | | 1 Bonnett to match | | 100 | Silk Wg. Appl. 60 per ct. |
| | | Boxes and Packing, | | 40 | |
| | | Case and Packing. | | 8 50 | 10,278 50 |
| | | | Frez | | 12,085 10 |

Paris,

September 25th, 1890.

pp. Marshall Field & Co.

C. Auber.

General No. 21,880. Term No. 606.

Je soussigne, C. Aubert, de Paris, declare solennellemt et veritablement que je suis le agent d. Marshall Field & Co. acheteurs des marchandises mentionnees et decrites dans la facture ci-jointe: que la dite facture est a tous egards exacte et veridique, et qu'elle a ete faite a Paris d'ou les dites marchandises doivent etre expediees aux Etats-Unis; que la dite facture contient le detail fidele et complet indiquant l'epoque a laquelle et l'endroit ou elles ont ete achetees, la personne de qui elles ont ete achetees, leur cout reel ainsi que tous les frais accessoires; qu'elle ne contient nul escompte, bonification ou rabais autres que ceux qui ont ete accordes; qu'aucune facture differente de celle ci-jointe n'a ete ni ne sera fournie a qui que ce soit, et que la monnaie en laquelle la dite facture a ete chiffree est la monnaie courante avec laquelle les dites marchandises ont ete reellement payees.

Je declare en outre que la declaration en douane des dites marchandises doit se faire a New York en transit pour Chicago.

pp Marshall Field & Co.
C. Auber.

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U. S. Consulate General, Paris, France.

I, Robert M. Hooper, Vice and Deputy Consul General of the United States at Paris, France, do hereby certify that at Paris, France, on this 26th day of Sept. A. D. 1890, the within invoice, in which are mentioned and described certain dry goods amounting, with the charges thereon, to the total sum of 12,085.10 frs., was produced to me by C. Aubert in person,

who thereupon declared in writing in my presence, that entry of said merchandise was to be made at the port of New York in transit for Chicago, in the United States of America.

I do further certify that I am satisfied that the person making the declaration hereto annexed is the person he represents himself to be, and that the price stated in said invoice represents the actual market value or wholesale price of the merchandise described in the said invoice in the principal markets of the country at the time of exportation, except as noted by me upon said invoice, or respecting which I shall make special communication to proper authority.

Witness my hand and seal of office at Paris, France, the day and year aforesaid.

(Signed) R. M. HOOPER,
Vice and Deputy Consul General of the United States.

No. 18,763.
Received $2.50.

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Said invoice and acknowledgments being endorsed: "Filed, February 5, 1891.

WM. H. BRADLEY,
*Clerk.*

And on the 20th day of February, 1891, a stipulation that said copy might be used in said cause with like effect as if original, said stipulation being in the words and figures following, to-wit:

In the United States Circuit Court for the Northern Division, Northern District of Illinois.

In the matter of the application of Marshall, Field & Co., for a review of the decision of the Board of General Appraisers at New York, of December 14th, 1890.

General No. 21,880
Term No. 606.

It is hereby stipulated that copies of the invoices of goods involved in the decision of the Board of General Appraisers

in the above entitled cause, may be used in said cause with like effect as originals.

THOMAS E. MILCHRIST,
*U. S. Att'y.*

N. W. BLISS,
*Atty. for Application.*

Endorsed: "Filed Feb'y 20, 1891.

WM. H. BRADLEY,
*Clerk.*

Afterwards, to-wit: On the 25th day of February, 1891, in the December term of said court, 1890, in the record of the proceedings thereof in said entitled cause, before the Hon. Henry W. Blodgett, District Judge, is the following entry to-wit:

In the matter of the application of Marshall, Field & Co., for a review of the decision of the United States Board of General Appraisers at New York. Protest 2051–B.

In this cause, the court being fully advised in the premises, announces its decision affirming the decision of the said United States Board of General Appraisers at New York.

It is therefore considered and adjudged by the court, that the said decision of the said United States Board of General Appraisers be, and it is, hereby affirmed, and that the appeal herein be dismissed at the costs of the appellants.

It is further considered and adjudged by the court, that the applicants pay the costs of this review, of the said decision of the said Board of General Appraisers, taxed at ..... ..... dollars and.....cents, and that execution issue therefor.

It is the opinion of the court that the questions involved are of such importance as to require a review of this decision by the Supreme Court of the United States; it is therefore further considered and ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States, and that the clerk of this court be, and is, hereby ordered and directed to make up the record for such appeal.

On the same day to-wit: On the 25th day of February, 1891, there was filed in said clerk's office an appeal bond in said entitled cause, which said bond is in the words and figures following, to-wit:

Know all men by these presents that we, Marshall Field & Co. (a mercantile firm composed of Marshall Field,

Joseph N. Field, Harlow N. Higinbotham, John G. McWilliams, Robert M. Fair, Thomas Templeton, Lafayette McWilliams, and Harry G. Selfridge,) Marshall Field, Harlow N. Higinbotham, John G. McWilliams, Robert M. Fair, Thomas Templeton, Lafayette McWilliams and Harry G. Selfridge as principals, and Marshall J. Wilson and Marc Sherwood as sureties, all of the city of Chicago and State of Illinois, are firmly bound unto the United States of America in the full and just sum of one thousand dollars to be paid to the said, The United States of America or to their certain attorneys, agents or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally, firmly by these presents.

Sealed with our seals and dated this twenty-fourth day of February, A. D. 1891.

The condition of this obligation is such that whereas lately at a session of the United States Circuit Court for the Northern Division of the Northern District of Illinois in a suit depending in said court in the matter of the application of Marshall Field & Co. to said court for a review of the decision of the United States Board of General Appraisers at New York, Protest 2951 B A final judgment was rendered against the said Marshall Field & Co., and the said Marshall Field & Co having been allowed an order of appeal, from the said judgment in the aforesaid matter, and a copy thereof having been filed in the clerk's office of said court, and a citation directed to the Hon. John M. Clark, United States Collector of the port of Chicago, as the agent of the said United States of America, citing him on behalf of his said principal to be, and appear at a Supreme Court of the United States now being held at Washington.

Now, therefore, the condition of the above obligation is such, that if the said Marshall Field & Co., shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

MARSHALL FIELD & CO., [SEAL.]
By Harlow N. Higinbotham, a member of the firm. [SEAL.]

MARSHALL FIELD, [SEAL.]
HARLOW N. HIGINBOTHAM, [SEAL.]
JOHN G. MCWILLIAMS, [SEAL.]
ROBERT M. FAIR, [SEAL.]
THOMAS TEMPLETON, [SEAL.]

LAFAYETTE MCWILLIAMS [SEAL.]
HARRY G. SELFRIDGE, [SEAL.]
MARSHALL J. WILSON, [SEAL]
MARC SHERWOOD, [SEAL.]

Approved by
H. W. BLODGETT,
Judge.

STATE OF ILLINOIS, }
County of Cook. } ss. Marshall J. Wilson and Marc Sherwood being first duly and severally sworn, on oath depose and say each for himself that he is a resident of the State of Illinois, that he is one of the above named sureties in the foregoing bond, that he is worth the sum of two thousand dollars over and above all his demands and liabilities, and that he has property liable to execution in the State of Illinois, equal to the sum of two thousand dollars.

Subscribed and sworn to before me by said Marshall J. Wilson and Marc Sherwood, this 24th day of February, 1891.
(Notarial seal.)

MARSHALL J. WILSON,
MARC SHERWOOD.

DORR A. KIMBALL,
Notary Public in and for Cook County, Illinois.

(Indorsed.)
Filed Feb'y 25th, A. D. 1891.

WM. H. BRADLEY,
Clerk.

On Tuesday, the 17th day of February, 1891, the said cause coming on to be heard before the said United States Circuit Court, for the Northern Division of the Northern District of Illinois, present: Hon. H. W. Blodgett, District Judge, Thomas E. Milchrist, District Attorney, assisted by Judge Hand, representing the government, and John P. Wilson and N. W. Bliss, appearing for the applicants; after hearing arguments of counsel, said cause was taken under advisement, and on Tuesday, the 24th day of February, 1891, said court handed down its decision in said cause, affirming the said decision of the said United States Board of General Appraisers at New York, and the court finds the following to be the facts, as established by the pleadings and evidence in the cause, to wit:

1st. That Marshall Field & Co., appellants, on the 6th day of October, 1890, were the owners of certain merchandise, and on that day imported the same into the port of New York, by the S. S. "La Champagne," that the same were transported to the port of Chicago, and entered for consumption and duties paid thereon October 10th, 1890, at certain rates levied and assessed under an alleged act of Congress, approved October 1st, 1890, entitled, "An act to reduce the revenue and equalize duties on imports and for other purposes" (known as the McKinley Tariff Act.)

That appellants objected to the rates and amount of duties so levied and assessed, and upon the rendition of a decision by the collector of the port of Chicago, sustaining the appraisers in due time, expressed their dissatisfaction and protested against such decision, claiming that the goods named were dutiable under the act of March 3d, 1883, as amended by the act of June 10th, 1890, for certain reasons set out in said protest, and asked a refund of the duties so levied in excess to the amount of $328.23

That upon this notice of protest and payment of duties, the Collector of the port of Chicago, transmitted the invoices of the merchandise named, and all the papers connected therewith, to the Board of United States General Appraisers, at New York, who, after examination, on the 14th day of December, 1890, rendered a decision sustaining the decision of the Collector of the port of Chicago, and that within thirty days next after such decision, to wit, on the 31st day of December, 1890, the said Marshall Field & Co., owners and importers of said merchandise, being dissatisfied with the decision of said Board of General Appraisers, applied to the Circuit Court of the United States for the Northern District of Illinois, for a review of the questions of law and fact involved in such decision, by filing in the office of the clerk of said Circuit Court, a concise statement of the errors of law and fact complained of, a copy of which was duly served upon the Collector of the port of Chicago.

It was admitted by the pleadings, and established by the evidence, that "H. R. 9416," in the House of Representatives, April 16th, 1890, reported from the committee of ways and means, "a bill to reduce revenue and equalize duties on imports and for other purposes," contained on page 141 as section 29, the following:

SEC. 29. That on and after the first day of January, eighteen hundred and ninety one, the internal taxes on

smoking and manufactured tobacco shall be four cents per pound, and on snuff four cents per pound.

And as section 30, the following:

SEC. 30. That on all original and unbroken factory packages of smoking and manufactured tobacco and snuff, held by manufacturers or dealers at the time the reduction herein provided for shall go into effect, upon which the tax has been paid, there shall be allowed a drawback or rebate of the full amount of the reduction but the same shall not apply in any case where the claim has not been presented within sixty days following the date of reduction, and such rebate to manufacturers may be paid in stamps at the reduced rate, and no claim shall be allowed or drawback paid for a less amount than ten dollars. It shall be the duty of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to adopt such rules and regulations and to prescribe and furnish such blanks and forms as may be necessary to carry this section into effect.

That H. R. 9416—In the Senate of the United States—an act to reduce the revenue, &c., reported by Mr. Morrill, with amendments, as a portion of said amendments contained the striking out of said portion of said section 29, and all of said section 30. That, by the conference report with bill H. R. 9416, said portion of said section 29 was amended by striking out the same and inserting in lieu thereof the following:

SEC. 30. That on and after the first day of January, eighteen hundred and ninety-one, the internal taxes on smoking and manufactured tobacco shall be six cents per pound and on snuff six cents per pound.

That by said conference report original section 30 amended by Senate Amendment 449, to read as follows, to-wit: "Section 30. That on all original and unbroken factory packages of smoking and manufactured tobacco and snuff, held by manufacturers or dealers at the time the reduction herein provided shall go into effect, upon which the tax has been paid, there shall be allowed a draw-back or rebate of the full amount of the reduction, but the same shall not apply in any case where the claim has not been presented within sixty days following the date of reduction, and such rebate to manufacturers may be paid in stamps at the reduced rate; and no claim shall be allowed or draw-back paid for a less amount than five dollars. It shall be the duty of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to adopt such rules

and regulations and to prescribe and furnish such blanks and forms as may be necessary to carry this section into effect. For the payment of the rebates provided for in this section there is hereby appropriated any money in the treasury not otherwise appropriated."

Was restored by the conference and became a part of the bill as passed by the two houses.

That H. R. 9416,—An act to reduce the revenue and equalize duties on imports and for other purposes as engrossed for presentation to the president, and as signed by him contained as section 30, the portion only as substituted for part of original Section 29, reading as follows, to wit:

Section 30. "That on and after the first day of January, eighteen hundred and ninety-one, the internal taxes on smoking and manufactured tobacco shall be six cents per pound, and on snuff six cents per pound."

Omitting entirely original section 30, as amended and restored by the conference report, reading as follows, to-wit:

(449.) Section 30. "That on all original and unbroken factory packages of smoking and manufactured tobacco and snuff, held by manufacturers or dealers at the time the reduction herein provided for shall go into effect, upon which the tax has been paid, there shall be allowed a drawback or rebate of the full amount of the reduction, but the same shall not apply in any case where the claim has not been presented within sixty days following the date of reduction, and such rebate to manufacturers may be paid in stamps at the reduced rate, and no claim shall be allowed or drawback paid for a less amount than five dollars. It shall be the duty of the Commissioner of Internal Revenue, with the approval of the secretary of the treasury, to adopt such rules and regulations and to prescribe and furnish such blanks and forms as may be necessary to carry this section into effect. For the payment of the rebates provided for in this section there is hereby appropriated any money in the treasury not otherwise appropriated."

That, upon the re-assembling of Congress in December, 1890, there was introduced into the House of Representatives, under unanimous consent, asked and obtained the following:

A bill (H. R 12447) to authorize the payment of drawback or rebate in certain cases

"Be it enacted, etc., that on all original and unbroken factory packages of smoking and manufactured tobacco and

snuff held by manufacturers or dealers at the time the reduced tax as provided for in an act to reduce the revenue and equalize duties on imports, and for other purposes, approved October 1, 1890, shall take effect, upon which the tax has been paid, there shall be allowed a drawback or rebate of the full amount of the reduction, but the same shall not apply in case where the claim has not been presented within sixty days following the date of reduction, and such rebate to manufacturers may be paid in stamps at the reduced rate, and no claim shall be allowed or drawback paid for for a less amount than $5. It shall be the duty of the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, to adopt such rules and regulations and to prescribe and furnish such blanks and forms as may be necessary to carry this act into effect. For the payment of the rebates provided for in this act there is hereby appropriated any money in the treasury not otherwise appropriated."

And that the same afterward passed the Senate, and was presented to and signed by the president.

(Indorsed.)

Filed Feb'y 25, 1891.

WM. H. BRADLEY, Clerk.

UNITED STATES OF AMERICA, } ss.
Northern District of Illinois, }

I, William H. Bradley, clerk of the Circuit Court of the United States for said district, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the matter of the application of Marshall Field and Company for a review of the decision of the United States Board of General Appraisers at New York, protest 2051, B. as the same appears from the record and files of said court, now remaining in my custody and control.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at my office in Chicago, in said district, this twenty-sixth day of February, 1891.

[SEAL]

WM. H. BRADLEY,
*Clerk.*

The United States of America, the President of the United States, to Hon. John M. Clark, Collector of the Port of Chicago, greeting:

You are hereby cited and admonished, as agent of the United States of America, to be and appear at a Supreme Court of the United States now being held at Washington on the first Monday of March, 1891, pursuant to an appeal granted and allowed to Marshall Field & Co., in the matter of their application to the United States Circuit Court for the Northern Division of the Northern District of Illinois, for a review of the decision of the United States Board of General Appraisers, to show cause, if any there be, why the judgment rendered against said appellants should not be reversed and why speedy justice should not be done to the parties in this behalf.

Witness the Honorable Henry W. Blodgett, District Judge of the Northern District of Illinois, this twenty-fourth day of February, A. D. 1891.

H. W. BLODGETT, Judge.

A copy of the foregoing citation is this day received.

JOHN M. CLARK, Collector of Customs, Port of Chicago.

By Thomas E. Milchrist, U. S. Att'y.